156-667

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 153.

THE NORFOLK AND WESTERN RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

EDMUND PENDLETON.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

FILED MAY 4, 1891.

(14,624.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 28, 1894.

1 Supreme Court of Appeals of Virginia, at Wytheville.

THE NORFOLK AND WESTERN R. R. CO.
vs.
EDMUND PENDLETON.

From the circuit court of Wythe county.

2 Supreme Court of Appeals of Virginia, at Wytheville.

THE NORFOLK & WESTERN RAILROAD COMPANY
vs.
EDMUND PENDLETON.

Petition.

To the honorable judges of the supreme court of appeals of Virginia:

Your petitioner, "The Norfolk and Western Railroad Company," would respectfully show to your honors that it is aggrieved by a judgment of the circuit court of Wythe county, pronounced and entered on the 16th day of December, 1889, to wit, at the September term last of said court, in an action of debt in which Edmund Pendleton was plaintiff and petitioner was defendant.

Petitioner presents herewith a full transcript of the record of said case, together with a copy of the said judgment, and prays that it may be considered as a part of this petition.

Petitioner is advised that the said circuit court erred in rejecting petitioner's special pleas offered in answer to plaintiff's declaration.

Petitioner is further advised that said circuit court also erred in overruling and rejecting petitioner's motion to said court to
3 pronounce judgment in its favor, and in entering judgment in favor of the plaintiff; that petitioner succeeded, as a railroad company, to all the rights, privileges and franchises of "The Lynchburg and Tennessee Railroad Company" and to those of the Virginia and Tennessee Railroad Company, and of "The Atlantic, Mississippi and Ohio Railroad Company;" that by the express provisions of the charter of the said last-named company, which consolidated the said several railroad companies that constituted and composed the last-named company it is provided (Acts 1869–'70, ch. —, section 14) "that as the stock of the said Norfolk and Petersburg, Southside, Virginia and Tennessee, and Virginia and Kentucky Railroad Companies, respectively, shall be absorbed by the said Atlantic, Mississippi and Ohio Railroad Company, as contemplated in the terms of this act, the said company shall become absolutely vested with all the rights of franchise and of property which belong to the same;" that one of the said franchises of the said V. & T. R. R. Co. was the right prescribed by the third section of its charter, to wit: "The tolls of said company shall be regulated and prescribed by the president and directors of said company, and the

further right to regulate and fix its charges for transportation of freights; that these charters are contracts between the incorporators and stockholders and the said State of Virginia, which the said State has no power to impair, alter or amend without consent of the other parties to said contract; that petitioner as the purchaser of said consolidated lines of railway succeeded to and acquired all the said rights of franchise and property that belonged to the said several consolidated lines, respectively, and to the said A., M. & O. R. R. Co., and to the full benefits of said contracts with said State: that *that* acts of the legislature of the said State of Virginia, passed after the 24th day of March, 1848, the date of the charter of the said Lynchburg and Tennessee Railroad Company, do not apply to and are inoperative, by the express provision of the acts themselves (Code 1873, ch. 61, sec. 1, 13, 16), to the charter, rights and franchises of petitioner; and that, if they were so intended or could be so construed, as modifying, restraining and restricting the chartered franchises of petitioner, so far as petitioner's said franchises

4 are, or were intended to be affected, said acts are unconstitutional and void.

For these and other errors to be assigned at bar petitioner prays your honors to review, reverse, annul, and set aside said judgment, and to enter such a judgment in favor of petitioner as the said circuit court should have entered; and to this end will grant petitioner a writ of error and supersedeas to said judgment, and as in duty bound, &c.

N. & W. R. R. COMPANY,
By W. H. BOLLING, *Attorney.*

To the honorable the judges of the supreme court of Virginia:

I respectfully certify to your honors that, in my opinion, there is such error in this judgment complained of, that the same should be reviewed and reversed by your honorable court.

Very respectfully, W. H. BOLLING.

Writ of error allowed and supersedeas awarded. Bond required in the penalty of $1,500, conditioned as required by law.

ROBT A. RICHARDSON.

Nov. 27th, 1889.

To the clerk of the supreme court of appeals at Wytheville, Va.

5 *Record.*

EDMUND PENDLETON
vs.
N. & W. RAILROAD COMPANY. } In Debt.

At a circuit court continued and held for Wythe county, Virginia, on the 16th day of September, A. D. 1889.

Declaration.

VIRGINIA, }
Wythe Co., } *To wit:*

Circuit Court.

Edmund Pendleton, plaintiff, complains of The Norfolk and Western Railroad Company, defendant, of a plea that they render unto him the sum of $800, which to him the said defendants owe and from him unjustly detain; for this to wit: that heretofore, to wit, on the 1st day of January, 1887, the defendant was a railroad company and a common carrier in the State of Virginia, and as such was engaged in the hauling of freights and passengers along its line of railway for hire, and was subject to the laws of the State of Virginia, made and enacted in that behalf, and said defendant being such railroad company as aforesaid on the day and year aforesaid and having been such for a long time before, and thence continued to be afterwards, received from the said plaintiff for shipment over its line of railroad from the station at Wytheville to the station at Max Meadows on the day and year aforesaid 8 sacks of specific manure, commonly called phosphate fertilizer, said 8 sacks of fertilizer weighed 1,600 lbs., and the distance between the two said stations is 8 miles, and the said plaintiff avers that the defendant charged and received toll and freight from the said *defenda-t* for the said 8 sacks of fertilizer between the two points aforesaid
6 the sum of $1.50, being a greater rate than the said defendant railroad company, aforesaid is allowed to charge by the statutes of Virginia in such cases made and provided, being in excess of four cents per ton per mile on the ton of 2,240 lbs., whereby and by reason of which the said defendant has become liable to the plaintiff in the penal sum of $100, part of the sum above demanded.

2nd.

And for this, to wit: that afterwards to wit, on another day to wit, the 15th January in the same year, that defendant being a railroad company as set out in the first count, received from the said plaintiff for shipment between the same stations as set out in said first count 7 sacks of the same fertilizer weighing 1,700 lbs., and upon the said fertilizer the said defendant charged and received from the plaintiff as toll or freight for the transportation of the same between the points aforesaid; *i. e.* from Wytheville to Max Meadows, the sum of $1.40, being a greater rate than the said defendant is allowed to receive by the statutes of Virginia in such case made and provided, whereby the said defendant b came liable to pay the plaintiff the penalty of $100, part of the sum above demanded, which, by the statutes of Virginia, he is entitled to have of and from the said defendant.

3d count.

And for this, to wit, that on the 16th day of March, 1887, the said defendant being a railroad company, as set out in the first

count, received of the plaintiff for transportation and did transport over its said road from Pulaski to Foster Falls 4 tons of 2,000 lbs. each, of the same fertilizer as set out in the first count, and for said transportation the said defendant charged and received from the said plaintiff the sum of $8.80, which said sum is more than 4 cents per ton per mile on 2,240 lbs. than said company is allowed by the laws of Virginia to charge and receive, whereby and by reason
7 of said statutes of Virginia the defendant has become liable to the plaintiff in the penalty of $100, part of the sum above demanded.

4th count.

And for this, to wit, that on the 14th day of September, 1886, the said defendant being a railroad company, as set out in the first count, received of the plaintiff for transportation, and did transport over its said railroad, from Wytheville to Draper's, 10 bags of the same fertilizer as aforesaid, which weighed 2,000 lbs., and for said transportation said defendant charged and received from the plaintiff the sum of $3.60, which last-mentioned sum is more than 4 cents per ton per mile for a ton of 2,240 lbs., allowed by the statutes of Va., and by reason of which and by reason of the statutes in such case made and provided the said defendant has become liable to the said plaintiff in the penalty of $100 part of the sum above demand-.

5th count.

And for this, that on the 3rd day of September, 1887, the said defendant being a railroad company as set out in the first count, received from the plaintiff for transportation, and did transport over its line of railroad from Wytheville to Rural Retreat, 2 sacks of the same fertilizer as set out in the first count, weighing 400 lbs., and for said transportation did charge and receive from the plaintiff the sum of 44 cents, which sum is more than 4 cents per ton of 2,240 lbs. per mile, the defendant was allowed by the statutes of Virginia, to charge and receive of the plaintiff for said transportation, whereby and by reason of which the defendant became liable to the plaintiff in the penalty of $100 part of the sum above demanded.

6th count.

And for this, that on the 2nd of September, 1887, the said
8 defendant being a railroad company, as set out in the first count, received from the plaintiff for transportation and did transport from Wytheville to Rural Retreat 5 sacks of the same fertilizer as that set out in the first count, weighing 1,000 lbs., and the defendant for said transportation did charge and receive of the plaintiff the sum of $1.10, which said sum is more than 4 cents per ton of 2,240 lbs. per mile, which said sum is more than the defendant was allowed by the statutes of Virginia to charge and receive of the plaintiff for such transportation as aforesaid, whereby and by reason of which the defendant became liable to the plaintiff in the penalty of $100, part of the sum above mentioned.

7th count.

And for this, to wit: that on 2nd day of September, 1887, the defendant being a railroad company as set out in the first count, received of the plaintiff for transportation and did transport from Wytheville to Rural Retreat 10 bags of the same fertilizer, set out in the first count, which said 5 bags weighed 2,000 lbs., and the plaintiff avers for said transportation the defendant charged and received from the plaintiff the sum of $2.20, which said sum is more than 4 cents per ton of 2,240 lbs., per mile, allowed by the law of Virginia to be charged and received by the said defendant, whereby and by reason of which the said defendant has become liable to pay the plaintiff the penalty of $100, part of the sum above demanded.

8th count.

And for this, to wit: that heretofore to wit: on the 1st of September, 1887, the defendant being a railroad company as set out in the first count, received of the plaintiff for transportation and did transport from Wytheville to Crockett's depot 10 bags of the same fertilizer set out in the first count, which said 10 bags weighed 2,000 lbs., and the plaintiff avers for said transportation the defendant charged and received from the *defendant* 70 cents,
9 which said sum is more than 4 cents per ton of 2,240 lbs., per mile, allowed by the laws of Va. to be charged and received by the said defendant, whereby and by reason of which the said defendant has become liable to pay the plaintiff the penalty of $100, part of the sum above demanded.

And the plaintiff avers that by the statutes of Virginia and by reason of the said several overcharges of freight and toll, aforesaid, the said defendant has become liable to pay the plaintiff the said several sums, aforesaid, which make up the sum of $800 above demanded, and the said plaintiff is entitled to have of and from the defendant the said several sums aforesaid.

Nevertheless, the said defendant hath not paid the said several sums of money nor any part thereof, but the same to pay has hitherto wholly refused and still doth refuse to the damage of the plaintiff, $800, and therefore he brings his suit.

PIERCE, *p. q.*

Form of Car Bill and Receipt.

All charges must be paid before the removal of goods.

No. 5585. ——, STATION, *Sept. 21st*, 1886.

Mr. J. M. Crockett, Max M., to the Norfolk & Western R. R. Co., Dr.

For amount due on freight per way-bill No. 1384, made at Wytheville, dated Sept. 21st, 1886:

Car.		Articles.	Weight.	Class.	Rate.	Fgt. chgs.	Tot-l.
Initial.	No.						
N. & W.	146	7 bags fltz.	1,460	6	7	98 cts.	98 cts.

Received payment,

J. E. PERKINS, *Ag't.*

Pleas.

1st plea. *Nil debet.*

2nd plea. And for a further plea in this behalf the defendant comes, and by its attorney, says that the said plaintiff ought not to have and maintain his said action against the said defendant; because the defendant says that it is a railroad company, incorporated under a charter granted by the State of Virginia, on the 24th day of March, 1848, and afterwards amended and re-enacted on the 6th day of March, 1849, and subject to the acts of the General Assembly of said State, passed on the 11th day of March, 1837, "prescribing certain general regulations for the incorporation of railroad companies;" and that said defendant has never given its assent to the passing of any law by the said General Assembly to change its tolls, as prescribed by the said act of the 11th day of March, 1837; and because the net profits of said defendant company have never amounted to the sum equal to the capital stock of said defendant company, with six per centum per annum interest thereon; and because the net profits of said defendant company have not been such that the said defendant company could declare, out of the said profits, dividends exceeding the rate of fifteen per centum per annum on the capital stock invested by said defendant company at any time since its organization; and this it is ready to verify, and therefore the defendant prays, &c.

3rd plea. And for a further plea in this behalf the said defendant comes, and by his attorney says that the said plaintiff ought not to have and maintain his said action against this defendant, because the defendant says that at no time since its organization as aforesaid,

have its rates of toll and transportation enabled its president and directors, after the payment of all necessary expenses, and after setting apart a fair and reasonable sum for the renewal and repairs of its road, warehouses, depots, and other construction, and of its machines, cars, and other vehicles of transportation, to divide more than 15 per cent. on its capital stock invested; and this the said defendant is ready to verify; and therefore the defendant prays judgment, &c.

4th plea. And for a further plea in this behalf the said
11 defendant comes, and by its attorneys, says that the said plaintiff ought not to have and maintain his said action against this defendant, because the defendant says that the said General Assembly of the State of Virginia, by passing the charter incorporating said defendant railroad company, to wit: The said act of March 24th, 1848, and its various amendments, and the act of June 17th, 1870, "to authorize the formation of the Atlantic, Mississippi and Ohio Railroad Company," and the subsequent and various amendments of the said last-named act, entered into a contract with said defendant as to its rates of toll and transportation, and exhausted its, the said General Assembly's, power over the subject, and could not regulate nor reduce the said defendant's tolls and rates of transportation; and the said defendant is ready to verify by its said charter, to wit: Said act of March 24th, 1848, and the amendment of the same; and any act of effort of said General Assembly to regulate and reduce the said defendant's tolls and rates of transportation is unconstitutional and void; and therefore the defendant prays judgment, &c.

Judgment and Bill of Exceptions.

This day came again the parties by their attorneys and the court having maturely considered the questions of law arising on the demurrer of the defendant to the plaintiff's declaration in this case, doth overrule the same, and the plaintiff objected to the pleas of the defendant and the cause is continued.

Upon the trial of this cause the following facts were agreed, to wit, that the freight charges set out in the plaintiff's declaration as made by the defendant company's agent against the planitiff for the transportation of the fertilizers, specified in said declaration are correctly stated, and that the said charges were paid by the plaintiff voluntarily and without objection, and that the distance over which the same were transported are substantially correct as well as the facts stated in the defendant's pleas, numbers 2, 3 and 4; and the matters of law and fact were submitted to the court; and the
defendant company moved the court upon the said facts and
12 law of the case to pronounce and enter judgment in favor of said defendant company; which motion of the said defendant company the court refused and overruled and entered a judgment in favor of the plaintiff in the words and figures following, to wit:

"This day came again the parties, by their attorneys, and the

court having considered the objections to the pleas of the defendant doth sustain the objections to pleas numbers 2, 3 and 4; whereupon, issue being joined on the plea of *nil debet*, by consent of the parties, a jury was waived and the matters of law and fact were submitted to the court: and having heard the evidence it is considered by the court that the plaintiff recover against the defendant $200, part of the debt in the declaration mentioned (being $25 in each count of the declaration) with legal interest thereon from this date until payment, and his costs by him about his suit in this behalf expended; to which judgment the defend- excepted and tendered his bill of exceptions, which was received, signed and sealed by the court and ordered to be made part of the record in this cause, and execution is suspended for sixty days, &c."

R. M. BROWN. [SEAL.]

A copy.
Teste: WM. B. FOSTER, *Clerk.*

Fee for transcript, $1.00.

A copy.
Teste: WM. C. PENDLETON, *C. C.*

12½ VIRGINIA:

In the clerk's office of the supreme court of appeals at Wytheville.

I, Wm. C. Pendleton, clerk of the supreme court of appeals of Virginia, at Wytheville, Va., do hereby certify, that the foregoing eleven pages of printed matter is a true copy of the record in case of Norfolk & Western Railroad Company *v.* Edmund Pendleton.

Teste: WM. C. PENDLETON, *C. C.*

13 VIRGINIA:

In the Supreme Court of Appeals, Held at the Court-house of Wythe County, in the Town of Wytheville, on the 16th Day of June, 1890.

THE NORFOLK & WESTERN RAILROAD COMPANY
against
EDMUND PENDLETON.

Upon a writ of error and supersedeas to a judgment of the circuit court of Wythe county, rendered on the 16th day of December, 1889.

This day came here the parties, by their counsel, and this cause is heard upon the transcript of the record of the judgment aforesaid and the arguments of counsel, but, because the court is not yet advised of its judgment to be given in the premises, time is taken to consider thereof.

14 VIRGINIA:

In the Supreme Court of Appeals of Virginia, at Staunton, on Thursday, September 15th, 1890.

THE NORFOLK & WESTERN RAILROAD COMPANY, Plaintiff in Error,
against
EDMUND PENDLETON, Defendant in Error.

Upon a writ of error and supersedeas to the judgment of the circuit court of Wythe county, of December 16th, 1889, in a suit at law of E. Pendleton *vs.* The Norfolk & Western Railroad Company.

This cause, which is pending at the place of session of this court, at Wytheville, having been fully heard, but not determined, at said place of session, this day came here the parties, by their counsel, and the court, having maturely considered the transcript of the record of the judgment aforesaid and the arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that there is no error in the said judgment. It is therefore considered by the court that the same be affirmed; and it is decreed and ordered by the court that the plaintiff in error do pay to the
15 defendant in error thirty dollars damages, and also his costs by him expended in the defence of the said writ of error and supersedeas here, which is ordered to be entered in the order book here and forthwith certified to the clerk of this court, at Wytheville, who shall enter the same in his order book and certify it to the said circuit court of the county of Wythe.

A copy.
Teste: JAMES B. DORMAN, *Clerk.*

To Wm. C. Pendleton, clerk.

A copy.
Teste: WM. C. PENDLETON, *Clerk.*

16 *Petition.*

NORFOLK & WESTERN RAILROAD COMPANY
v.
EDMUND PENDLETON.

To the Honorable Melville W. Fuller, Chief Justice of the United States:

Your petitioner, The Norfolk & Western Railroad Company, a corporation chartered and duly organized under the laws of the State of Virginia, would respectfully show to your honor that it is aggrieved by final judgment rendered against petitioner at the September term, A. D. 1890, by the supreme court of appeals of the State of Virginia, that being the highest court of the State in which a decision in the suit could be had, in an action brought by the said Edmund Pendleton against your petitioner to recover the penalty or forfeiture imposed by the 17th section of chapter 61 of the Code of Virginia of 1873, for demanding of and receiving from him

greater amounts of toll than those permit-ed by the 18th section of the same chapter.

All of the facts stated in the declaration and the pleas tendered by your petitioner were admit-ed to be true, the only defence made by your petitioner in the suit being that to hold it liable under said 17th and 18th sections of chapter 61 of the Code of 1873 would deny to your petitioner the right to demand and receive such tolls as by its charter it is authorized to demand and receive and would thus impair the obligation of the contract between the State and your petitioner.

17 Said supreme court of appeals held, erroneously, as your petitioner is advised, that said 17th and 18th sections of chapter 61 of the said code, under which suit was brought, did not deprive your petitioner of any right to which it is entitled under its charter, and renderered final judgment accordingly against it for the penalty or forfeiture sued for, all of which will more fully appear from the record and proceedings in said suit, a copy whereof is hereby filed, whereby it appears that manifest error has been committed to the damage of your petitioner.

Wherefore your petitioner prays for the allowance of a writ of error and such other process as may cause the same to be corrected by the Supreme Court of the United States, and as in duty bound, &c.

W. J. ROBERSTON,
W. H. BOLLING,
Counsel for Petitioner.

18 (Supreme Court of Appeals of Virginia, September Term, 1890, Held at Wytheville, Virginia.)

NORFOLK & WESTERN R. Co.
v.
EDMUND PENDLETON.

Opinion of the Court.

LEWIS, *P.:*

This was an action of debt in the circuit court of Wythe county by Edmund Pendleton against the Norfolk & Western Railroad Company, to recover certain penalties for alleged overcharges on the transportation of fertilizers. The declaration, which contains eight counts, alleges that at various times, which are specified, the plaintiff shipped from Wytheville to other points on the defendant's road certain quantities of a specific manure, commonly called "phosphate fertilizer," for which the defendant charged and collected freight at a rate exceeding four cents per ton of 2,240 pounds per mile, contrary to the statute in such cases made and provided. The points mentioned in the declaration are on the line of what was formerly the Lynchburg & Tennessee railroad, which is one of the components of the defendant corporation. The action is founded on the provisions of sections 17, 18, c. 61, Code 1873. The last-mentioned section enacts that "on a railroad on which different

rates are not prescribed by law, the following rates of toll may be charged for transportation, to wit: On gypsum, lime, guano, and other specific manures, not exceeding four cents per ton of 2,240 pounds per mile." And by the seventeenth section it is enacted that for any violation of the eighteenth section the offending company shall forfeit to the injured party a sum, to be recovered by motion or action, of not less than $25 nor more than $100. The eighteenth section is taken from an act passed January 14, 1853, which was intended to apply to the railway corporations of the Commonwealth generally. Acts 1852–'53, p. 62. A jury being waived, judgement was rendered for the plaintiff for $200 and costs; to which judgement a writ of error was awarded by one of the judges of this court.

The main defence relied on by the court below and here is that the defendant company is not subject to the provisions of the statute above quoted, and the grounds of this contention are that the Norfolk & Western Railroad Company is the successor of the Atlantic, Mississippi & Ohio Railroad Company, which was the successor of the Virginia & Tennessee Railroad Company, which was the successor of the Lynchburg & Tennessee Railroad Company; that by the third section of the charter of the last-mentioned company, which was granted in 1848, it was provided that the tolls of the said company should be regulated and prescribed by the president and directors of the company, with the proviso that if at any time the rates of toll and transportation should enable the president and directors, after paying all necessary expenses and after setting apart a fair and reasonable sum for renewal and repairs of the road, warehouses, etc., to divide more than 15 per cent. on their capital stock invested, then the legislature might regulate and reduce the tolls; and that at no time since its organization has its rates of toll and transportation enabled the defendant company, after payment of necessary expenses, etc., to divide more than 15 per cent. on its capital stock invested. The argument is that the foregoing provisions of the charter of the Lynchburg & Tennessee Railroad Company constituted a contract with the company the obligation of which cannot be impaired by subsequent legislation, and, moreover, that by the fourteenth section of the charter of the Atlantic, Mississippi Railroad Company which was granted in 1870 it was provided that the last-mentioned company should, among other things, be vested with all the rights of franchise of the Virginia & Tennessee and the Lynchburg & Tennessee Railroad Companies, and that the defendant company succeeded to those rights as the success- of the Atlantic, Mississippi & Ohio Railroad Company. This argument, however, overlooks the fifth section of the act incorporating the Atlantic, Mississippi & Ohio Railroad Company, which must be read in connection with the said fourteenth section, whereby it was provided that the company should be subject to all the laws of the Commonwealth which apply to the railroad corporations thereof generally, and the act of 1853 is, as we have seen, such a law. Acts 1869–'70, p. 182; acts 1852–'53, p. 62. The defendant company, as the successor by purchase of the

Atlantic, Mississippi & Ohio Railroad Company, is, of course, bound by this provision, and is consequently subject to the provisions of the act last above mentioned. In other words, it succeeded to the right to operate a railroad, but subject as to the regulation of its tolls to the general laws of the Commonwealth aforesaid, for the right of a State to reasonably limit the amount of charges by a railroad company for the transportation of persons and property within its own jurisdiction, unless restrained by some contract in the charter or unless what is done amounts to a regulation of foreign or interstate commerce, is well settled and not disputed. Railroad Commission Cases, 116 U. S., 307; 6 Sup. Ct Rep., 334, 348, 349, 388, 391, 1191; Railroad Co. *v.* Maryland, 21 Wall., 456; Chicago,
21 etc., R. Co. *v.* Iowa, 94 U. S., 155; Ruggles *v.* Illinois, 108 U. S., 526; 2 Sup. Ct Rep., 832. Nor was there error in overruling the demurrer to the declaration. It is contended that the declaration is bad, because it fails to aver that the defendant company is not within the exceptions contained in sections 1–58, c. 61, Code 1873; but such averment was not necessary. The declaration conforms to the act under which it was drawn, and that is all that was required. It need only be added that the motion of the defendant in error to dismiss the writ of error for want of jurisdiction must be overruled. The constitutionality of the act of 1853 as applied to the present case is drawn in question, and that of itsself is sufficient to give this court jurisdiction, although the matter in controversy here is less in amount than $500. The judgment of the circuit court must therefore be affirmed.

22 VIRGINIA:

In the clerk's office of the supreme court of appeals of Virginia, at Wytheville.

I, Wm. C. Pendleton, clerk of the supreme court of appeals of Virginia, at Wytheville, do hereby certify that *that* the foregoing is a true copy of the record, proceedings, and opinion of the court in the case of The Norfolk & Western Railroad Company *v.* Edmund Pendleton, lately pending in said supreme court of appeals, at Wytheville.

Witness my hand and official seal this the first day of May, in the year of our Lord one thousand eight hundred and ninety-one.

[Seal Supreme Court of Appeals of Virginia, Wytheville.]

WM. C. PENDLETON,
Clerk of the Supreme Court of Appeals of Virginia, at Wytheville.

23 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of appeals of the State of Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Norfolk & Western Railroad Company, plaintiff in error, and Edmund Pendleton, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction
24 of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the seventh day of April, in the year of our Lord one thousand eight hundred and ninety-one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

MELVILLE W. FULLER,
Chief Justice.

25 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Edmund Pendleton, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of appeals of the State of Virginia, wherein The Norfolk & Western Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this seventh day of April, in the year of our Lord one thousand eight hundred and ninety-one.

MELVILLE W. FULLER,
Chief Justice.

26 On this 30th day of April, in the year of our Lord one thousand eight hundred and ninety-one, personally appeared W. H. Bolling before me, the subscriber, Wm. C. Pendleton, clerk of the supreme court of appeals of Virginia, at Wytheville, and makes oath that he delivered a true copy of the within citation to Edmund Pendleton on the 11th day of April, 1891.

Sworn to and subscribed the 30th day of April, A. D. 1891.

[Seal Supreme Court of Appeals of Virginia, Wytheville.]

WM. C. PENDLETON,
Clerk of the Supreme Court of Appeals of Va., at Wytheville.

27 Know all men by these presents that we, W. H. Bolling, of Wytheville, State of Virginia, and Francis P. B. Sands, of Washington, District of Columbia, as sureties, are held and firmly bound unto Edmund Pendleton in the full and just sum of two thousand dollars, to be paid to the said Edmund Pendleton, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this seventh day of April, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas lately at a supreme court of appeals of the State of Virginia, in a suit depending in said court between The Norfolk & Western Railroad Company, plaintiff in error, and Edmund Pendleton, defendant in error, a judgment was rendered against the said plaintiff in error, and the said plaintiff in error having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Edmund Pendleton citing and admonishing

him to be and appear at a Supreme Court of the United States to be holden at Washington within thirty days from the date hereof:

Now, the condition of the above obligation is such that if the said plaintiff in error shall prosecute said writ to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) W. H. BOLLING. [SEAL.]
(Signed) FRANCIS P. B. SANDS. [SEAL.]

Sealed and delivered in presence of—

(Signed) JAMES D. MAHER.

Approved by—

(Signed) MELVILLE W. FULLER,
Chief Justice.

Copy.

Endorsed on cover: Case No. 14,624. Virginia supreme court of appeals. No. 153. The Norfolk & Western Railroad Company, plaintiff in error, *vs.* Edmund Pendleton. Filed May 4, 1891